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MICHAEL SIRBU

UNITED STATES DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA,  
SAN FRANCISCO DIVISION

CV 09 3593

MICHAEL SIRBU,

Plaintiff,

v.

VALENTINE & KEBARTAS, INC.,

Defendant.

Case No.:

COMPLAINT AND DEMAND FOR  
JURY TRIAL

(Unlawful Debt Collection Practices)

VERIFIED COMPLAINT

MICHAEL SIRBU (Plaintiff), by his attorneys, KROHN & MOSS, LTD., alleges the following against VALENTINE & KEBARTAS, INC. (Defendant):

**INTRODUCTION**

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq. (FDCPA).
2. Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788 et seq. (RFDCPA).
3. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, insurers, and attorneys.

**JURISDICTION AND VENUE**

4. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and *28 U.S.C. 1367* grants this court supplemental jurisdiction over the state claims contained therein.
5. Defendant conducts business in the state of California, and therefore, personal jurisdiction is established.
6. Venue is proper pursuant to *28 U.S.C. 1391(b)(2)*.
7. Declaratory relief is available pursuant to *28 U.S.C. 2201 and 2202*.

**PARTIES**

8. Plaintiff is a natural person residing in Ross, Marin County, California.
9. Plaintiff is a consumer as that term is defined by *15 U.S.C. 1692a(3)*, and according to Defendant, Plaintiff allegedly owes a debt as that term is defined by *15 U.S.C. 1692a(5)* and *Cal. Civ. Code § 1788.2(h)*.
10. Defendant is a debt collector as that term is defined by *15 U.S.C. 1692a(6)* and *Cal. Civ. Code § 1788.2(c)*, and sought to collect a consumer debt from Plaintiff.
11. Defendant is a national company with its headquarters in Lawrence, Massachusetts.

**FACTUAL ALLEGATIONS**

12. Defendant constantly and continuously placed collection calls to Plaintiff seeking and demanding payment for an alleged debt.
13. Defendant constantly and continuously places multiple collection calls in a single day to (415) 251-3435 and (310) 967-9830.
14. Defendant calls Plaintiff and hangs up the phone before Plaintiff or his answering machine can answer the phone.
15. Defendant calls and leaves messages that fail to inform Plaintiff of the name of the caller

1 or the company for which the caller is calling from. (See Exhibit A).

2 16. Defendant places collection calls to Plaintiff and leaves messages that fail to inform  
3 Plaintiff that the call is coming from a debt collector. (See Exhibit A).

4 **COUNT I**  
5 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

6 17. Defendant violated the FDCPA based on the following:

- 7 a. Defendant violated §1692d of the FDCPA by engaging in conduct of which the  
8 natural result is the abuse and harassment of the Plaintiff.
- 9 b. Defendant violated §1692d(5) of the FDCPA by causing a telephone to ring  
10 repeatedly and continuously with the intent to annoy, abuse, and harass Plaintiff.
- 11 c. Defendant violated §1692d(6) of the FDCPA by placing calls to Plaintiff and  
12 failing to provide meaningful disclosure of the caller's identity by either calling  
13 and hanging up or by leaving messages which do not identify the Defendant or  
14 the calling agent.
- 15 d. Defendant violated §1692e(10) of the FDCPA by engaging in the false and  
16 deceptive practices of placing calls to Plaintiff without informing him that the  
17 calls are coming from a debt collector.
- 18 e. Defendant violated §1692e(11) of the FDCPA by failing to disclose in  
19 subsequent communications that the communication is from a debt collector.

20 18. As a direct and proximate result of one or more or all of the statutory violations above  
21 Plaintiff has suffered emotional distress (see Exhibit B).

22 WHEREFORE, Plaintiff, MICHAEL SIRBU, respectfully requests judgment be entered  
23 against Defendant, VALENTINE & KEBARTAS, INC., for the following:

24 19. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection  
25 Practices Act,

20. Statutory damages pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k,

1 21. Actual damages,

2 22. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,  
3 *15 U.S.C. 1692k*

4 23. Any other relief that this Honorable Court deems appropriate.

5 **COUNT II**  
6 **DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION**  
7 **PRACTICES ACT**

8 24. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as  
9 the allegations in Count II of Plaintiff's Complaint.

10 25. Defendant violated the RFDCPA based on the following:

11 a. Defendant violated §1788.11(b) of the RFDCPA by placing calls to Plaintiff and  
12 failing to provide meaningful disclosure of the caller's identity by either calling  
13 and hanging up or by leaving messages which do not identify the Defendant or  
14 the calling agent.

15 b. Defendant violated §1788.11(d) of the RFDCPA by causing Plaintiff's telephone  
16 to ring repeatedly and continuously so as to annoy Plaintiff.

17 c. Defendant violated §1788.11(e) of the RFDCPA by placing collection calls to  
18 Plaintiff with such frequency that was unreasonable and constituted harassment.

19 d. Defendant violated the §1788.17 of the RFDCPA by continuously failing to  
20 comply with the statutory regulations contained within the FDCPA, *15 U.S.C. §*  
21 *1692 et seq.*

22 26. As a direct and proximate result of one or more or all of the statutory violations above  
23 Plaintiff has suffered emotional distress (see Exhibit B).

1 WHEREFORE, Plaintiff, MICHAEL SIRBU, respectfully requests judgment be entered  
2 against Defendant, VALENTINE & KEBARTAS, INC., for the following:

3 27. Declaratory judgment that Defendant's conduct violated the Rosenthal Fair Debt  
4 Collection Practices Act,

5 28. Statutory damages pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal.*  
6 *Civ. Code §1788.30(b)*,

7 29. Actual damages,

8 30. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection  
9 Practices Act, *Cal. Civ Code § 1788.30(c)*, and

10 31. Any other relief that this Honorable Court deems appropriate.

11  
12 **DEMAND FOR JURY TRIAL**

13 PLEASE TAKE NOTICE that Plaintiff, MICHAEL SIRBU, demands a jury trial in this  
14 cause of action.

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17  
18 DATED: July 30, 2009

RESPECTFULLY SUBMITTED,

KROHN & MOSS, LTD

19  
20 By: 

21 Nicholas J. Bontrager  
22 Attorney for Plaintiff  
23  
24  
25

**VERIFICATION OF COMPLAINT AND CERTIFICATION**

STATE OF CALIFORNIA

Plaintiff, MICHAEL SIRBU, states as follows:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, MICHAEL SIRBU, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

DATE:

7/25/2009

  
MICHAEL SIRBU



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**EXHIBIT A**

Hello, this is a very important message for Michael Sirbu. This is not a sales or marketing phone call. Press the 9 key now or call us back at 800-731-7766. Thank you.



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**EXHIBIT B**

I have suffered from the following due to, or made worse by, the actions of the Defendant's debt collection activities:

- |   |                                      |                          |
|---|--------------------------------------|--------------------------|
| 1. Sleeplessness  | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 2. Fear of answering the telephone                            | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 3. Nervousness  | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 4. Fear of answering the door                                 | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 5. Embarrassment when speaking with family or friends         | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 6. Depressions (sad, anxious, or "empty" moods)               | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 7. Chest pains  | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 8. Feelings of hopelessness, pessimism                        | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 9. Feelings of guilt, worthlessness, helplessness             | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 10. Appetite and/or weight loss or overeating and weight gain | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 11. Thoughts of death, suicide or suicide attempts            | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 12. Restlessness or irritability                              | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 13. Headache, nausea, chronic pain or fatigue                 | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 14. Negative impact on my job                                 | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 15. Negative impact on my relationships                       | <input checked="" type="radio"/> YES | <input type="radio"/> NO |

Other physical or emotional symptoms you believe are associated with abusive debt collection activities:

2011 documented weight loss -  
CASE of chronic Insomnia - prescribed Ambien  
NOT WANTING TO ANSWER phone - MISSING  
IMPORTANT phone calls causing and  
CONTRIBUTING TO OVERPOWERING Pessimism -

Pursuant to 28 U.S.C. § 1746(2), I hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: 7/25/2009

[Signature]  
Signed Name

Michael Sirbu  
Printed Name